



INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-781

Certain Microprocessors, Components Thereof, and Products Containing Same Termination of Investigation with a Finding of No Violation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on December 14, 2012, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in this investigation. On review, the Commission has determined to reverse or vacate certain findings, and to terminate the investigation with a finding of no violation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on

this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 7, 2011, based on a complaint filed by X2Y Attenuators, LLC of Erie, Pennsylvania ("X2Y"). 76 *Fed. Reg.* 39,895 (July 7, 2011). The respondents are Intel Corporation and Intel America, Inc., both of Santa Clara, California; Componentes Intel de Costa Rica S.A. of Heredia, Costa Rica; Intel Technology Sdn Bhd of Penang, Malaysia; and Intel Products (Chengdu) Ltd. of Chengdu, China (collectively, "Intel"), as well as two of Intel's customers who import computers containing accused Intel microprocessors, Apple Inc. of Cupertino, California ("Apple"); and Hewlett-Packard Company of Palo Alto, California ("HP").

Originally, X2Y asserted numerous claims from five patents. X2Y later received leave to amend the notice of investigation to add a sixth patent, Order No. 13 (Oct. 14, 2011), *not reviewed*, Nov. 14, 2011, but X2Y later moved to terminate the investigation as to three of the six patents and as to certain claims of the remaining three, Order No. 35 (June 13, 2012), *not reviewed*, June 29, 2012; Order No. 59 (Sept. 7, 2012), *not reviewed*, Oct. 4, 2012. What remains are claims 23 and 30 of U.S. Patent No. 7,609,500 ("the '500 patent"); claims 29, 31, 33, and 36 of U.S. Patent No. 7,916,444 ("the '444 patent"); and claims 20, 28-31 of U.S. Patent No. 8,023,241 ("the '241 patent").

On December 14, 2012, the presiding ALJ issued the ID. The ALJ found no violation of section 337. Based substantially on adoption of certain of respondents' claim constructions, the ALJ found that none of the patent claims were infringed and that most were invalid as indefinite under 35 U.S.C. § 112(b). The ALJ rejected the respondents'

other section 112 challenges, as well as their equitable defenses based upon equitable estoppel, unclean hands, and laches. The ALJ found in the alternative that if X2Y's claim constructions were adopted, all of the asserted claims would be invalid under 35 U.S.C. §§ 102 or 103 in view of the prior art.

On December 31, 2012, X2Y filed a petition for review that challenged certain claim constructions, as well as the ALJ's findings of noninfringement and invalidity. That same day, the respondents filed a contingent petition for review arguing additional bases for no violation. On January 9, 2013, the private parties opposed each other's petitions. In addition, the Commission investigative attorney filed a narrow opposition, which recommended against Commission review of the domestic industry issues raised by the private parties.

Having examined the record of this investigation, including the ALJ's final ID, the petition for review, and the responses thereto, the Commission has determined to review the final ID in part.

With respect to the issues raised in X2Y's petition for review, the Commission has determined to review the ALJ's determination that the term "portion" in the '444 and '241 patents is indefinite under 35 U.S.C. § 112(b). The Commission finds that the term is not insolubly ambiguous and affords the term its ordinary meaning. The Commission has also determined to review and reverse the ALJ's determination that all of the asserted patent claims have a "capacitance" requirement not part of the adopted claim constructions. The Commission has determined not to review the ALJ's constructions of the terms "electrode" (all asserted patents) and "perimeter edge" (the '241 patent). The Commission has determined not to review the ALJ's finding of noninfringement based

upon these constructions. Regarding the ALJ's alternative invalidity findings under 35 U.S.C. §§ 102 and 103 based upon claim constructions rejected by the ALJ and the Commission, the Commission reviews and vacates those determinations.

In view of the foregoing, the Commission, like the ALJ, therefore does not reach the written description and anticipation arguments raised by the respondents in their contingent petition, both of which rely on claim constructions inconsistent with the Commission's findings.

X2Y petitioned for review of the ALJ's determination that X2Y did not demonstrate the existence of a domestic industry under 19 U.S.C. § 1337(a)(3)(C) through its licensing activities. The respondents petitioned for review of the ALJ's determination that X2Y did demonstrate the existence of a domestic industry under section 337(a)(3)(C) through the engineering, research and development activities and investments of X2Y's licensee. The Commission has determined to vacate the ALJ's determinations under section 337(a)(3)(C) without reaching the merits. The ALJ's findings under this subsection are nondispositive in view of the Commission's adopted claim constructions. Moreover, it appears that the issues would be nondispositive even under X2Y's proposed claim constructions, in view of the ALJ's findings under section 337(a)(3)(A) and (a)(3)(B).

The Commission has determined not to review the remainder of the ID. Accordingly, the Commission has terminated this investigation with a finding of no violation. The Commission's determinations will be set forth more fully in the Commission's forthcoming opinion.

The authority for the Commission's determination is contained in section 337 of

the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-46 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: February 15, 2013

[FR Doc. 2013-04070 Filed 02/21/2013 at 8:45 am; Publication Date: 02/22/2013]